

United States District Court
Central District of California

SONIA GARCIA, an individual,
Plaintiff,

v.

MERCHANTS BANK OF CALIFORNIA,
N.A., a National Banking Association;
SCOTT RACUSIN, an individual; and
Does 1 through 50, inclusive,
Defendants.

Case No. 2:17-cv-04791-ODW-SK

**ORDER GRANTING PLAINTIFF'S
MOTION TO REMAND [7]**

I. INTRODUCTION

Before the Court is Plaintiff Sonia Garcia's Motion to Remand. (Mot., ECF No. 7.) For the reasons discussed below, the Court **GRANTS** Plaintiff's Motion to Remand.

II. BACKGROUND

In April 2015, Defendant Merchants Bank of California ("Merchants Bank") hired Plaintiff Sonia Garcia as a Bank Secrecy Act ("BSA") Officer. (*See* Compl. ¶ 11, ECF No. 1-2.) Plaintiff was responsible for ensuring Merchants Bank complied with the BSA, including the anti-money laundering ("AML") provisions. (*Id.* ¶ 14.)

1 Plaintiff alleges that around July 2015, Plaintiff alerted her superiors at Merchants
2 Bank of transactions that potentially did not comply with the BSA. (*Id.* ¶ 18.) In
3 October 2015, she informed the Merchants Bank Board of Directors and executives of
4 the company's potential BSA violations and, in response, the Board discounted her
5 concerns. (*Id.* ¶ 19.)

6 Plaintiff ultimately alerted the U.S. Office of the Comptroller of the Currency to
7 the suspicious transactions and federal regulators initiated a high-level review of
8 Merchants Bank. (*Id.* ¶ 21.) Plaintiff alleges that, subsequent to the initiation of the
9 review, Merchants Bank further stripped Plaintiff of her responsibilities and
10 reallocated them to another employee. (*Id.* ¶ 22.) Plaintiff complained about her
11 reduced responsibilities to the Chairman of the Consent Order Compliance Program
12 and the Human Resources Department. (*Id.* ¶ 23–24.) Plaintiff alleges that work
13 hostility intensified until Merchants Bank fired her in September 2016. (*Id.* ¶¶ 30–32,
14 35.)

15 On May 11, 2017, Plaintiff filed this action in state court against Defendants
16 Merchants Bank and Scott Racusin alleging claims for: (1) Whistleblower Retaliation
17 (Cal. Lab. Code section 1102.5); (2) Wrongful Termination in Violation of Public
18 Policy; (3) Defamation; (4) Violations of Business and Professions Code section
19 1700; and (5) Waiting-Time Penalties (Cal. Lab. Code section 203). (*Id.* 1.) On June
20 26, 2017, Defendants removed this action from state court to federal court. (Not. of
21 Removal, ECF No. 1.)

22 **III. LEGAL STANDARD**

23 Federal courts have subject matter jurisdiction only as authorized by the
24 Constitution and by Congress. U.S. Const. art. III, § 2, cl. 1; *Kokkonen v. Guardian*
25 *Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Federal courts have original
26 jurisdiction where an action arises under federal law, or where each plaintiff's
27 citizenship is diverse from each defendant's citizenship and the amount in controversy
28 exceeds \$75,000. 28 U.S.C. §§ 1331, 1332(a). A defendant may remove a case from

1 state court to federal court only if the federal court would have had original
2 jurisdiction over the suit. 28 U.S.C. § 1441(a). The removal statute is strictly
3 construed against removal, and “[f]ederal jurisdiction must be rejected if there is any
4 doubt as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d
5 564, 566 (9th Cir. 1992). The party seeking removal bears the burden of establishing
6 federal jurisdiction. *Durham v. Lockheed Martin Corp.*, 445 F.3d 1247, 1251 (9th
7 Cir. 2006).

8 IV. DISCUSSION

9 Plaintiff’s Complaint lacks any federally based claims and she premises all of
10 her claims on state law. (Mot. 14.) Plaintiff argues that her claims do not present a
11 substantial, disputed federal question, nor do they elicit the artful pleading doctrine.
12 (*Id.* at 14–15.) Defendants argue that Plaintiff’s state-law claims necessarily raise a
13 federal issue that requires the interpretation and application of BSA rules, AML
14 provisions, and related regulations. (Opp’n 11–12, ECF No. 10.) Defendants further
15 contend that Plaintiff’s claims are preempted by section 24 (Fifth) of the National
16 Bank Act and thus remand is improper. (*Id.* at 16.)

17 Plaintiff claims the interpretation of BSA rules is not an essential element of her
18 claims, and that whether Merchants Bank actually violated federal banking laws is
19 irrelevant. (Reply 9, ECF No. 11.) Plaintiff also argues that Defendants’ preemption
20 argument is simply a defense, and does not provide a basis for federal jurisdiction.
21 (*Id.* at 12.) The Court agrees with Plaintiff that the Complaint lacks any independent
22 basis for federal jurisdiction and, as such, remand is proper.

23 A. No Independent Basis for Federal Jurisdiction

24 The “well-pleaded complaint rule” provides “that federal jurisdiction exists
25 only when a federal question is presented on the face of the plaintiff’s properly
26 pleaded complaint.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Federal
27 question jurisdiction may exist where “a state-law claim necessarily raise[s] a stated
28 federal issue, actually disputed and substantial, which a federal forum may entertain

1 without disturbing any congressionally approved balance of federal and state judicial
2 responsibilities.” *Grable & Sons Metal Prods, Inc. v. Darue Eng’g & Mfg.*, 545 U.S.
3 308, 314–15 (2005) (holding the meaning of a federal tax provision “is an important
4 issue of federal law that sensibly belongs in a federal court”).

5 Under California Law, Plaintiff may support her claim for wrongful termination
6 by demonstrating she maintained “reasonably based suspicions” for reporting her
7 employer’s potential violation. *Green v. Ralee Eng’g Co.*, 19 Cal. 4th 66, 87 (1998).
8 Defendants assert that proving Plaintiff “reasonably believed the Bank was not
9 complying with the BSA and AML rules . . . necessarily will involve interpretation of
10 a complex scheme of federal banking statutes and regulations.” (Opp’n 12.) Plaintiff
11 argues she will not have to prove that Merchants Bank *actually* violated any federal
12 law. (Reply 9.) The California Supreme Court has determined that “an employee
13 need not prove an actual violation of law” in order to establish their “reasonably based
14 suspicions.” *Green*, 19 Cal. 4th at 87. Furthermore, Defendants have not sufficiently
15 demonstrated in what way Plaintiff’s case would involve the interpretation and
16 application of the BSA and AML rules and regulations. (See Opp’n 11–12.)

17 Defendants rely on *Grable* and *D’Alessio* to support their assertion that there is
18 federal jurisdiction here. (Opp’n 10–11.) In *Grable*, the Supreme Court found federal
19 jurisdiction existed because interpretation of a federal statute was an “essential
20 element” towards the resolution of plaintiff’s claims. *Grable*, 545 U.S. at 314. In
21 *D’Alessio*, the Second Circuit found federal jurisdiction where the plaintiff premised
22 her claims on the defendants’ failure to comply with federal laws and regulations.
23 *D’Alessio v. N.Y. Stock Exch., Inc.*, 258 F.3d 93, 103 (2d Cir. 2001). Here, Plaintiff’s
24 claim is neither like *Grable* nor *D’Alessio*, as interpretation of a federal statute is not
25 an “essential element” of Plaintiff’s claim because she need only prove she had
26 “reasonably based suspicions” regarding her employer’s unlawful acts. See *Green*, 19
27 Cal. 4th at 87. This showing is unlike the showing required in *D’Alessio*, where the
28 plaintiff’s claims “necessarily require[d] an inquiry into whether the NYSE

1 satisfactorily performed its duty in identifying potential violations of the federal
2 securities laws and assisting in any criminal or civil investigation arising from a
3 member's noncompliance with those laws, [which were] both areas of strong federal
4 interest.” *D’Alessio*, 258 F.3d at 103. Here, the Court will be required to analyze
5 Plaintiff’s state of mind in reporting the alleged violations, as opposed to the thrust of
6 the regulations themselves.

7 Defendants contend that subject matter jurisdiction exists here because Plaintiff
8 has a private right of action available to her pursuant to 12 U.S.C. section 183j(b).
9 (Opp’n 13.) Defendants further support their contention by citing *Merrell Dow*
10 *Pharm. Inc. v. Thompson*, 478 U.S. 804, 817 (1986) to suggest that Congress intended
11 to confer subject matter jurisdiction over cases where section 183j(b) provides a
12 private right of action. (*Id.*) In *Merrell*, the Court established that there is no
13 substantial federal question issue in cases where Congress has *not* provided a private
14 right of action. *Merrell Dow Pharm. Inc.*, 478 U.S. at 817. However, “*Merrell Dow*
15 neither purported to establish a *per se* rule for cases where Congress **has** provided a
16 private right of action nor repudiated the well-established rule that ‘the party who
17 brings a suit is master to decide what law he will rely on.’” *Lyster v. First Nationwide*
18 *Bank Fin. Corp.*, 829 F.Supp. 1163, 1169 (N.D. Cal. 1993) (citing *The Fair v. Kohler*
19 *Die Specialty Co.*, 228 U.S. 22, 25 (1913)) (emphasis added). Here, the Court does
20 not have subject matter jurisdiction over Plaintiff’s claim simply because she *could*
21 have brought a claim under section 183j(b). *Id.*

22 Courts have long understood that “the mere presence of a federal issue in a state
23 cause of action does not automatically confer federal-question jurisdiction.” *Merrell*,
24 478 U.S. at 813. The California Superior Court is a court of general jurisdiction and,
25 as such, is capable of undertaking any case, even where there may be the presence of a
26 federal issue. *See* Cal. Civ. Proc. Code § 410.10 (West). The Court finds there is no
27 subject matter jurisdiction over Plaintiff’s claims.

28 //

1 **B. Complete Preemption Doctrine**

2 Defendants argue that Plaintiff's state law claims are preempted by section 24
3 (Fifth) of the National Bank Act. (Opp'n 16.) The complete preemption doctrine is a
4 narrow exception to the rule that courts must determine the existence of federal
5 question jurisdiction by looking at the plaintiff's claims rather than the defendant's
6 defenses. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004). Complete
7 preemption exists where "a federal statute wholly displaces the state-law cause of
8 action." *Id.* (internal quotation marks omitted). Federal question jurisdiction exists
9 in those instances because the federal regulatory scheme subsumes the plaintiff's
10 claim, and thus, "even if pleaded in terms of state law, is in reality based on federal
11 law." *Id.* at 207–08 (internal quotation marks omitted).

12 In *Lyster v. First Nationwide Bank Financial Corp.*, the plaintiff filed suit in
13 California Superior Court against his bank employer for, *inter alia*, wrongful
14 termination and retaliation, and the defendants removed to federal court. *Lyster*, 829
15 F.Supp. at 1165. On a motion to remand, the defendants there argued that the
16 plaintiff's claims would be preempted by 12 U.S.C. section 1831j should the case be
17 remanded to state court. *Id.* at 1167. In *Lyster*, the court determined that section
18 1831j "can hardly be considered a candidate for the 'complete preemption corollary'
19 [as it] does *not* preempt state law." *Id.* at 1168. The Court here finds the facts and
20 circumstances in *Lyster* to be substantially similar to the case at hand. Defendants fail
21 to establish that the issue of preemption here is anything more than an affirmative
22 defense to two of Plaintiff's claims to be adjudicated in state court. The Court finds
23 no reason to depart from the reasoning expressed in *Lyster* and, therefore, the
24 complete preemption doctrine is not applicable here.

25 //

26 //

27 //


28 //

1 **IV. CONCLUSION**

2 For the reasons discussed above, the Court **GRANTS** Plaintiff's Motion to
3 Remand (ECF No. 7) and **REMANDS** this case to the Los Angeles Superior Court,
4 Case No. BC661198.

5
6 **IT IS SO ORDERED.**

7
8 September 19, 2017

9
10 

11 **OTIS D. WRIGHT, II**
12 **UNITED STATES DISTRICT JUDGE**
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28